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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/612,424 | 07/02/2003 | Robert F. Flynn | 247_183 | 5002 |
| 20874 | 7590 | 05/25/2005 | EXAMINER | |
| WALL MARJAMA & BILINSKI 101 SOUTH SALINA STREET SUITE 400 SYRACUSE, NY 13202 | | | FOSTER, JIMMY G | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3728 | |

DATE MAILED: 05/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/612,424

Applicant(s)

FLYNN ET.AL

Examiner

Jimmy G Foster

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-17 is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-8 and 10-12 is/are rejected.
- 7) ☒ Claim(s) 5 and 9 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/2/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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1) Claims 13-17 are allowable.

2) The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3) Claims 1-4, 6-8, 10 and 12 are rejected under 35 U.S.C. § 102(b) as being anticipated by Voroba (5,117,977). In the reference of Voroba, there is provided a tray portion at container 50 (as shown in 4a-4c), a plurality of slots at channels 81 in the tray, and a rotatable cover at 60, and a slotted opening at portal 66. The combination of this structure defines a selective dispenser/package.

The package of Voroba is intended for containing disc-shaped button batteries and not crystals. However, Applicant is not claiming the crystals as structure but as intended use. Although the package is for holding button batteries in the slots 81, it is inherently capable of holding crystals instead which have the size and shape of the button batteries. This capability meets Applicant's intended use limitation with respect to crystals.

Moreover, inasmuch as crystals may be made with any size and shape, the slots 81 are inherently capable of retaining crystals of appropriate shape only at their peripheral edges.

Regarding the limitation calling for means for retaining a crystal removing tool, the aperture 78 of Voroba is capable of holding a crystal

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removing tool. Inasmuch as the aperture is an opening, it is inherently capable of retaining a removal tool in the same manner as Applicant's retaining means.

Regarding the limitations referring to stacking the package of Voroba is capable of having a like package vertically stacked on the top thereof since the top of the package is generally flat and since the package has a height shorter in length than its diameter.

Regarding Applicant's limitation calling for the slots to have inner walls and outer walls, this does not distinguish over the slots of Voroba, which are shown in the Figures to include an outer wall defining a half-oval shape, and an inner wall defining an elongated shape that extends radially of the package tray. The inner wall may be considered to define a recess. The inner wall may also be considered to include a scalloped region at the innermost extremity thereof, as seen in Figures 4a-4c.

Regarding the limitation with respect to the spacing between the slots, this is not considered to distinguish over the slots of the tray of Voroba. The spacing between the slots of positions 2 and 3 of Figure 5b is generally equal to the spacing between slots that is on the opposite side of the tray. The spacing between the slots of positions 1 and 2 (with the position 1 slot being the one with the reference numeral 92 pointing thereto) appears to be larger, however, than the spacing between the slot of positions 2 and 3.

4) Claims 1-4, 6-8, 10 and 11 are rejected under 35 U.S.C. § 102(b) as being anticipated by Garde et al (6,325,241). In the reference of Garde et al there is provided a dispenser/package, including a tray at bottom part 1, a cover at lid part 2, slots at the compartments 4, a slotted aperture in the cover defined by the removal of closure 13.

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Additionally, the package of Garde et al includes a detent mechanism at 10,12 for indexing the radial positions of the cover with respect to the tray as the cover rotates on the tray.

Applicant does not claim the crystals in the claim as structure but as intended use. Although the reference of Garde et al is concerned with the storage and dispensing of tablets, it is inherently capable of storing and dispensing crystals, of appropriate size and shape, instead. This capability meets the intended use claimed by Applicant with respect to crystal.

The slots of Garde et al have a shape which includes opposed walls which define curved/scalloped/recessed regions since the walls are not planar but curved. Accordingly, the walls of the slots are capable of retaining crystals only at their peripheral edges.

Part 3 of Garde et al may be considered to define a portion of the cover. The kerf 17, which is an opening in the cover, is capable of retaining a tool of appropriate size that is capable of removing crystals from the slots. Inasmuch as the rejected claims only claim the tool as intended use this capability meets what is claimed regarding retaining a tool.

A plurality of dispensers/packages of Garde et al are inherently capable of being stacked since the package is generally disk shaped and would provide a stable stack.

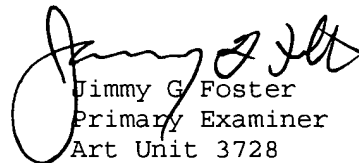
5) Claims 5 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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6) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jimmy G Foster whose telephone number is (571) 272-4554. The examiner can normally be reached on Mon-Fri, 8:45 am - 5:15 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.


Jimmy G Foster
Primary Examiner
Art Unit 3728

JGF
24 May 2005